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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,455	03/27/2004	Jacob N. Gust	13911	9335
25542	7590	12/15/2005	EXAMINER	
CNH AMERICA LLC INTELLECTUAL PROPERTY LAW DEPARTMENT PO BOX 1895, M.S. 641 NEW HOLLAND, PA 17557			NEWVILLE, TONI E	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 12/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/810,455	Applicant(s) GUST ET AL.	
	Examiner Toni Newville	Art Unit 3671	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 November 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See attached sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attached sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

ADVISORY ACTION

Examiner's Response

1. Regarding the applicant's request for reconsideration, the application is not placed in condition for allowance because of the following:

Regarding claims 1 and 4:

The argument that the Schlesser patent is disclosed to a mower rather than a seeder is discussed in the 103(a) rejection of Schlesser in view of Houck, stating that it would have been obvious to replace the mower of Schlesser with a seeder. See office action filed 9/8/2005.

Regarding the argument that the Schlesser patent does not disclose the hydraulic system (52) lowering the wings to a working position in contact with the ground and raising the wings to a transport position, the Schlesser patent states, "a pair of hydraulic cylinders...apply a selected lifting force to the distal end of each cutter head 16A and 16B" (page 3 paragraph 41 lines 3-5). While Schlesser does not specifically disclose this lifting being to move the cutter heads 16A and 16B to working and transport positions, it is inherent based on the positioning of cylinders 52 that such lifting could move the cutter heads 16A and 16B to working and transport positions. Any raised position could be considered a transport position. Furthermore, the cutter heads of the Schlesser patent must indirectly contact the ground so as to be close enough to the surface to mow. Additionally, because of the substitution of the cutter heads for

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seeders as described above, it is inherent that the seeders would need to be lowered to a ground-engaging position.

Regarding the argument that the references do not disclose the step of locking the first and second hydraulic cylinders, the examiner has assumed that "locking" refers to prevention of cylinder retraction or elongation through standard means such as closing the valve through which hydraulic fluid is dispensed. The applicant provides no detail as to what "locking" means, and does not disclose any specific structure associated with such locking. Applicant's arguments make it appear that some type of special locking structure is actually being claimed in claim 4, "both the first and second hydraulic cylinders having a lock thereon to hold the respective cylinders in the working position." If this is true, it would potentially raise 35 USC § 112 1st paragraph issues, since no such structure is disclosed. As stated in the previous office action, the hydraulic cylinders 52 are inherently capable of locking in a given position.

Regarding the argument that the hydraulic cylinders 52 are not capable of allowing the first and second wings (16A, 16B) to float about the point at which the first and second support arms are pivotally affixed to the center points of the respective first and second wings (pivot points 50 in Schlessner, see Fig. 2), Schlessner states: "Each cutter head 16A and 16B pivots about a pivot axis 50...thereby allowing cutter heads 16A and 16B to float or adjust to the contour of the ground during operation" (page 3 paragraph 40 lines 6-10).

Regarding the argument that the cylinders 52 do not connect the wings 16A, 16B to the main frame 14, the cylinders 52 inter connect wings 16A and 16B to the main

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frame via arms 18A and 18B (Fig. 2). The applicant does not state that the cylinders must be directly connected.

2. Regarding claim 6, the amendment raises new issues that would require further consideration. The limitation "about the pivotally attached second end", while described in the specification, was not previously presented in any claims. Therefore, the amendment will not be entered.

3. Regarding the limitations recited in claims 3, 5 and 7-10, the rejections stand as presented in the previous office action.

Conclusion

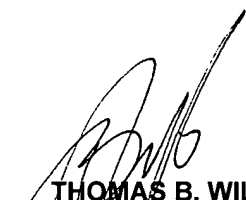
4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Toni Newville whose telephone number is (571) 272 - 1548. The examiner can normally be reached on Monday - Friday 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on (571) 272-6998. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Toni Newville
December 7, 2005



THOMAS B. WILL
Supervisory Patent Examiner
Group 3600